IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

CRL.A.No. 1984 of 2004(A)

SC.651/2002 of ADDL.SESSIONS COURT, FAST TRACT (ADHOC-I), ALAPPUZHA

CP.52/2002 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

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APPELLANT:

VAMADEVAN, S/O.MADHAVAN, C.8844,
CENTRAL PRISON, THIRUVANANTHAPURAM - 12.

BY ADV. ADV.K.K.RAJEEV(STATE BRIEF)
SRI.K.K. RAJEEV- S.B

RESPONDENTS:

STATE OF KERALA, REP. BY THE
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 01/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. THANKAPPAN, J.

Crl.A.No.1984 OF 2004-A

Dated this the 1st day of December, 2006.

JUDGMENT

The appellant faced trial for an offence punishable under Section 8(1) Abkari Act. The prosecution case against the appellant is that on 28.8.2000 at about 3.30 p.m the appellant was found in possession of 3.5 liters of arrack in violation of the provisions of the Abakri Act and thereby committed the offence. To prove the case against the appellant, the prosecution examined PWs 1 to 6 and relied on Exts.P1 to P4. Mos 1 and 2 were also produced. On closing the prosecution evidence, the appellant was questioned under Section 313 of the Code of Criminal Procedure. Denying the allegation levelled against the appellant, he had stated that he was falsely implicated by the excise officials and he was taken into custody by them by the side of a canal and the excise officials got his address and he was arrested and produced before the court. However, relying on the evidence of the prosecution, both oral and documentary, the trial court found the appellant guilty under Section 8(1) and punished under Section 8(2) of the Abkari Act and he was

convicted thereunder and sentenced to undergo simple imprisonment for three years and to pay a fine of Rs. One lakh with a default sentence of simple imprisonment for a further period of one year. The conviction and sentence ordered by the trial court are assailed in this appeal. The appeal was filed through the jail authorities and as the appellant is not defended by the counsel of his own choice, a counsel from the State brief was appointed to defend the appellant before this Court.

2. This Court heard the learned counsel appearing for the appellant as well as the Public Prosecutor. The learned counsel appearing for the appellant submits that the trial court went wrong in finding that the appellant had committed the offence charged against him as there is no evidence to prove the charge against the appellant. The evidence of prosecution witnesses relied on by the trial court are not legally acceptable as those witnesses were not questioned by the investigating officer as per the provisions of Section 15 of the Abkari Act.

3. To prove the case against the appellant, the trial court

relied on the evidence of PWs 1,4,5 and 6. PWs 2 and 3, who were cited to prove that the appellant was arrested and the contraband article was seized from him as alleged by the prosecution. However, PWs 2 and 3 turned hostile to the prosecution, though they have admitted their signatures in Ext.P1 Mahazar. The evidence of PW5 would show that on the day of the incident while himself and Pws 1 and 4 on patrol duty, they reached K.I.P canal, they have seen the appellant coming in front of them holding MO1 bag and when the appellant had seen PW5 and other excise officials, he tried to escape from the scene. However, the appellant was stopped and questioned and it was found that the bag contained a plastic cannas full of liquor and on further enquiry it was found that the plastic cannas contained 3.5 liters of illicit arrack. Thereafter, Ext.P1 seizure mahazar was prepared in the presence of PWs 2 and 3 and sample was taken from the contraband article seized from the appellant and he was arrested and produced before the court on the next day along with the sample taken and the residue. Thereafter further investigation was continued by PW6 and filed final charge against the appellant on getting the sample got analyzed by the public analyst. PWs 1 and 4, who

accompanied PW5 at the time of detection of the crime have given evidence in tune with that of PW5. Both these witnesses testified that they accompanied PW5 and they have seen the appellant with MO1 plastic cannas which contained illicit arrack and further these witnesses have stated that the sample was taken from the contraband article seized from the appellant. PW6 had stated that he continued further investigation of the case and the sample sent for chemical analysis and got Ext.P4 chemical report in which it is stated that the sample contained 27.15% of ethyl alcohol by volume. The trial court relying on the evidence of those witnesses found the appellant committed the offence as charged. Though all the prosecution witnesses were cross examined by the defence counsel, their evidence has not been shattered and the only contradiction made by PW5 is with regard to the date of occurrence and he had corrected that date as 28.8.2000 is a clerical error which occurred in his deposition. Further, it could be seen that though the case was detected on 28.8.2000, PW5 had stated that statement of the witnesses was recorded only in 2002. But, it could be seen that all the witnesses now relied on by the prosecution are the excise officials and even if the delay in

recording the statement of the witnesses was not explained by PW5 it is not fatal to the prosecution case as the officials have stated before the court that they accompanied PW5 on the date of detection of the case and this was not challenged by the defence. Hence, the contention of the learned counsel that the delay caused in recording the statement is fatal to the prosecution is not acceptable. In an over all appreciation of the prosecution evidence, this Court is of the view that the findings entered by the trial court are on legally acceptable evidence and the conviction ordered against the appellant is justifiable.

4. With regard to the sentence, the learned counsel appearing for the appellant submits that, the appellant being a man of 80 years at the time of detection of the crime, a lenient view ought to have been taken by the trial court while awarding sentence against the appellant. The trial court had considered this question and also found that there is no previous excise case against the appellant. Considering all these facts, this Court is of the view that sentences awarded against the appellant requires reconsideration.

5. In the above circumstances, the sentence awarded against the petitioner under Section 8(1) is reduced to S.I for one year and six months and the default of fine is reduced to S.I. for six months. It is also seen that the appellant was convicted by the judgment dated 30.9.2004. From the date of judgment itself, the appellant is committed to prison and he is undergone imprisonment for more than t two years. Hence, this Court is of the view that the sentence of imprisonment awarded against the petitioner is confined to the period already undergone by him.

Accordingly, The appellant/accused in S.C.No.651/2002 on the file of the Additional Sessions Judge, Fast Track (Adhoc-1), Alappuzha shall be released forthwith if he is not required to be kept in jail in connection with any other case.

K. THANKAPPAN, JUDGE.

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K. THANKAPPAN, J.

CRL.A.NO.1984 OF 2004-A

JUDGMENT

1st December, 2006.